

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, and
JOHN MEINERS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NATIONAL ASSOCIATION OF
REALTORS, COMPASS, INC., EXP
WORLD HOLDINGS, INC., REDFIN
CORPORATION, WEICHERT
REALTORS, UNITED REAL ESTATE,
HOWARD HANNA REAL ESTATE
SERVICES, and DOUGLAS ELLIMAN,
INC.

Defendants.

Case No. 4:23-cv-00788-SRB

ORAL ARGUMENT REQUESTED

Honorable Stephen R. Bough

**DEFENDANT DOUGLAS ELLIMAN INC.'S INDIVIDUAL MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6) AND TO STRIKE CLASS ALLEGATIONS PURSUANT
TO RULES 12(f) AND 23(d)(1)(D)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), 12(f), and 23(d)(1)(D), and in accordance with the Scheduling Order of this Court, Defendant Douglas Elliman Inc. (“Douglas Elliman”), by and through its undersigned counsel, moves to dismiss the Class Action Complaint (the “Complaint”) filed by Plaintiffs Don Gibson, Lauren Criss, and John Meiners, individually and on behalf of all others similarly situated, for failure to state a claim, and to strike all class action allegations in the Complaint to the extent that they do not exclude putative class members who have signed agreements to arbitrate or waive the claims which Douglas Elliman can enforce in this action. In support of this motion, Douglas Elliman relies upon Defendant Douglas Elliman’s Suggestions in Support of Its Individual Motion to Dismiss Pursuant to Rule 12(b)(6) and to Strike Class Allegations Pursuant to Rules 12(f) and 23(d)(1)(D) (the “Douglas Elliman Suggestions”), which is filed contemporaneously herewith and incorporated by reference. Douglas Elliman also

relies upon the Suggestions in Support of Defendants' Joint Motion to Dismiss (ECF No. 121), the pleadings and records on file with this Court, any other motions to dismiss and suggestions in support of same concurrently filed by any other defendant in this action, and such argument as may be presented at any hearing on this motion.¹

As further set forth in the Douglas Elliman Suggestions, Plaintiffs have not plausibly alleged Douglas Elliman's involvement in a conspiracy under Section 1 of the Sherman Act. Plaintiffs have not plead facts sufficient to demonstrate Douglas Elliman's involvement in any purported conspiracy, nor can Plaintiffs sustain the argument that membership in a trade association alone meets their pleading burden. Without pleading any facts particular to Douglas Elliman that allege its involvement, Plaintiffs have failed to plausibly allege Douglas Elliman's involvement in any purported conspiracy under Section 1. The claims against Douglas Elliman should therefore be dismissed.

In addition, Douglas Elliman intends to invoke, and does not waive, its rights concerning any putative class members who have signed agreements with applicable arbitration clauses or class actions waivers. While none of the named plaintiffs in this action appear to have signed such an agreement, to the extent that members of the putative class did sign agreements with such arbitration or mediation clauses or class action waivers, Douglas Elliman now moves to enforce its arbitration, mediation, and class action waiver rights. The Eighth Circuit has clarified that those rights are not waived as to absent class members by moving to enforce them after a class is certified. Nonetheless, for the avoidance of any doubt, Douglas Elliman moves, pursuant to Rules 12(f) and 23(d)(1)(D), to strike the class allegations because of Plaintiffs' failure to

¹ In addition to the reasons for dismissal detailed in the Douglas Elliman Suggestions, Douglas Elliman further incorporates the arguments set forth in its contemporaneously filed Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3) for Lack of Personal Jurisdiction and Improper Venue. (See ECF No. 101.)

exclude from the putative class, those members who have signed agreements that contain an arbitration provision or class action waiver that apply to Douglas Elliman.

Dated: February 26, 2024
New York, New York

Respectfully submitted,

/s/ Marc E. Kasowitz

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 26 day of February, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will provide an electronic copy to the following:

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